

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIGUEL E. JOAQUIN,

Petitioner,

-v-

BRANDON J. SMITH,

Respondent.

21 Civ. 9372 (PAE) (SLC)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

On February 27, 2023, this Court denied *pro se* petitioner Miguel E. Joaquin's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* Dkt. 18. Judgment was entered by the Clerk of Court on the same day. *See* Dkt. 19. Under Federal Rule of Appellate Procedure 4(a)(1), the time to file a notice of appeal expired 30 days after entry of the judgment on the Court's docket. The deadline, therefore, was March 29, 2023. Joaquin did not file a notice of appeal.

On August 29, 2023, Joaquin filed a motion to extend the time to file an appeal. *See* Dkt. 20 ("Motion"). For the following reasons, Joaquin's motion is denied.

DISCUSSION

A habeas petitioner under § 2254 has 30 days from the entry of judgment to appeal. *See* Fed. R. App. P. 4(a)(1); Rule 11(b) of the Rules Governing Section 2254 Cases in the U.S. District Courts, 28 U.S.C. foll. § 2254 (providing that Federal Rule of Appellate Procedure 4(a) governs § 2254 claims). This requirement is "mandatory and jurisdictional." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 61 (1982) (per curiam) (quoting *Browder v. Dir., Dep't of Corrs.*, 434 U.S. 257, 264 (1978)). In this case, because judgment was entered on the

docket on February 27, 2023, *see* Dkts. 18–19, Joaquin had until March 29, 2023 to appeal. He did not do so.

There are two possible routes to an extension, but neither is open to Joaquin.

First, Federal Rule of Appellate Procedure 4(a)(5) allows a district court to “extend the time to file a notice of appeal” if, *inter alia*, “a party so moves no later than 30 days after the time prescribed” to file a notice of appeal in the first place (that is, no later than 60 days after the entry of judgment). Fed. R. App. P. 4(a)(5); *see also, e.g.*, *Melton v. Frank*, 891 F.2d 1054, 1056 (2d Cir. 1989) (“If . . . the motion to extend is not filed within subdivision (a)(5)’s grace period, the district court is without power to grant an extension [under Rule 4(a)(5)].”). Here, however, that additional 30-day window expired on April 28, 2023, with no such motion being filed.

Second, Federal Rule of Appellate Procedure 4(a)(6) allows a district court to “reopen the time to file an appeal” for an additional 14 days if:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6). Here, however, Joaquin does not allege that he failed to receive notice of the entry of the judgment. He alleges that he “did not file [a] notice [of appeal] within the permitted time because [he] could not find a facility law library clerk to assist [him].” Motion at 1. That excuse is not cognizable under Rule 4(a)(6). This option, too, is unavailable.¹

¹ The 180-day deadline for filing a motion to reopen was August 26, 2023—several days before the Court received Joaquin’s motion on August 29, 2023. The Court assumes *arguendo* that the prison-mailbox rule applies to Rule 4(a) filings, such that Joaquin’s motion should be deemed filed on the date he delivered it for mailing (here, August 20, 2023). *Cf. Houston v. Lack*, 487 U.S. 266, 275–75 (1988) (prison-mailbox rule applies to Rule 4(a)(1) notices of appeal).

CONCLUSION

For the foregoing reasons, the Court denies Joaquin's motion for an extension of time to file a motion of appeal. This case remains closed.

SO ORDERED.

Paul A. Engelmayer

Paul A. Engelmayer
United States District Judge

Dated: August 30, 2023
New York, New York